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No. 15-108

IN THE
# Supreme Court of the United States

THE COMMONWEALTH OF PUERTO RICO,

*Petitioner,*

v.

LUIS M. SÁNCHEZ VALLE AND
JAIME GÓMEZ VÁZQUEZ,

*Respondents.*

**On Writ of Certiorari to the Supreme Court of Puerto Rico**

## BRIEF FOR PETITIONER

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## QUESTION PRESENTED

Whether the Commonwealth of Puerto Rico and the Federal Government are separate sovereigns for purposes of the Double Jeopardy Clause of the United States Constitution.

## PARTIES TO THE PROCEEDINGS BELOW

Petitioner, the Commonwealth of Puerto Rico, was respondent in the Puerto Rico Supreme Court.

Respondents, Luis M. Sánchez Valle and Jaime Gómez Vázquez, were petitioners in the Puerto Rico Supreme Court.

René Rivero Betancourt and Rafael A. Delgado Rodríguez were defendants below but did not participate in the proceedings before the Puerto Rico Supreme Court.

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## INTRODUCTION

This case calls upon the Court to clarify the application of the Double Jeopardy Clause of the United States Constitution to the Commonwealth of Puerto Rico. That Clause, as this Court has long held, protects a defendant from successive prosecutions by the *same* sovereign, but not by a *different* sovereign. Overruling its own longstanding precedent, a divided Puerto Rico Supreme Court held below that Puerto Rico and the Federal Government are a single sovereign because Puerto Rico is not a State. Thus, according to that court, the federal Double Jeopardy Clause limits the Commonwealth's ability to enforce its *own* laws in its *own* courts against a defendant who has been tried, acquitted, or convicted under *federal* law in *federal* court.

The Puerto Rico Supreme Court thereby erred. Just because Puerto Rico is not a State does not mean that it is an arm of the Federal Government. In the federal double jeopardy context, as this Court has long explained, whether two entities are separate sovereigns turns on the source of authority for each entity's laws. Insofar as those laws emanate from different sources of authority, the two entities cannot be deemed to have created the "same offense," and each entity may thus prosecute a defendant under its own laws without raising any federal double jeopardy concerns.

This case thus boils down to the question whether Puerto Rico law emanates from a different source of authority than federal law. The answer to that question is plainly "yes." Puerto Rico law emanates from authority delegated by the people of Puerto Rico, who engaged in an exercise of popular

sovereignty in 1952 by adopting their *own* Constitution establishing their *own* government to enact their *own* laws. The Commonwealth of Puerto Rico is a creature of the people of Puerto Rico, not of Congress. That point resolves this case.

To be sure, Congress authorized and ratified that exercise of popular sovereignty by the people of Puerto Rico. But that does not mean that the Puerto Rico Constitution and the laws enacted thereunder emanate from Congress. To the contrary, the authorizing legislation, Public Law 600 of 1950, proposed a "compact" under which "*the people of Puerto Rico* may organize a government pursuant to a constitution of their *own* adoption." Pub. L. No. 81-600, 64 Stat. 319 (1950), Pet. App. 353a (emphasis added). The people of Puerto Rico accepted that compact and adopted their own Constitution. And Congress ratified that compact by approving the Puerto Rico Constitution. *See* Pub. L. No. 82-447, 66 Stat. 327 (1952), Pet. App. 355-57a.

The Puerto Rico Constitution, thus, is not an act of Congress; rather, it is a democratic manifestation of the will of the people of Puerto Rico. Indeed, the Constitution makes that point clear on its face. Its opening words specify that it was adopted by "[w]e, the people of Puerto Rico ... in the exercise of our natural rights," and that "the will of the people is the source of public power." P.R. Const. pmbl., Pet. App. 358a. To attribute the Puerto Rico Constitution to Congress, instead of the people of Puerto Rico, is thus "to impute to the Congress the perpetration of ... a monumental hoax." *Figueroa v. People of Puerto Rico*, 232 F.2d 615, 620 (1st Cir. 1956).

Because the Constitution and laws of Puerto Rico emanate from authority delegated by the people of Puerto Rico, not from Congress, the federal Double Jeopardy Clause poses no barrier to successive prosecutions under federal and Commonwealth law. Accordingly, this Court should reverse the judgment.

## OPINIONS BELOW

The opinion of the Supreme Court of Puerto Rico is reported in the original Spanish at 2015 TSPR 25, 2015 WL 1317010, and a certified English translation is reprinted in the Petition Appendix ("Pet. App.") at 1-242a. The opinion of the Court of Appeals of Puerto Rico is unreported, and a certified English translation is reprinted at Pet. App. 243-306a. The opinions of the trial court dismissing the indictments against respondents Sánchez Valle and Gómez Vázquez are unreported, and certified English translations are reprinted at Pet. App. 307-29a and 330-52a respectively.

## JURISDICTION

The Puerto Rico Supreme Court issued its decision on March 20, 2015. Pet. App. 1a. On June 5, 2015, Justice Breyer extended the time within which to file a petition for a writ of certiorari to and including July 20, 2015. Petitioner filed a timely petition for certiorari on July 17, 2015, which this Court granted on October 1, 2015. This Court has jurisdiction under 28 U.S.C. § 1258.

## PERTINENT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Double Jeopardy Clause of the United States Constitution provides that "[n]o person shall be ...

subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V.

The Territorial Clause of the United States Constitution provides in relevant part that "[t]he Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory ... belonging to the United States." U.S. Const. art. IV, § 3, cl. 2.

Public Law 600 of 1950 (entitled "An Act to provide for the organization of a constitutional government by the people of Puerto Rico"), Pub. L. No. 81-600, 64 Stat. 319 (1950), codified at 48 U.S.C. § 731 *et seq.*, Public Law 447 of 1952 (entitled "Joint Resolution approving the constitution of the Commonwealth of Puerto Rico which was adopted by the people of Puerto Rico on March 3, 1952"), Pub. L. No. 82-447, 66 Stat. 327 (1952), and excerpts of the Puerto Rico Constitution are reproduced in the appendix to the petition. *See* Pet. App. 353-62a.

The Treaty of Paris, under which the Kingdom of Spain ceded Puerto Rico to the United States, *see* Treaty of Peace between the United States of America and the Kingdom of Spain, 30 Stat. 1754, T.S. No. 343 (1899), and the two organic acts under which the United States established a civil government in Puerto Rico before the adoption of the Puerto Rico Constitution—the Foraker Act, *see* Organic Act of 1900, Ch. 191, 56th Cong., 1st Sess., 31 Stat. 77 (1900), and the Jones Act, *see* Organic Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917)—are reproduced in the Joint Appendix. *See* JA56-66, 67-89, 90-131. So too are Article 73 of the United Nations Charter, the Memorandum by the United States Government to the United Nations General

Assembly regarding the cessation of information on Puerto Rico under that Article, and General Assembly Resolution 748 responding to that Memorandum. *See* JA132-33, 134-47, 148-51.

## STATEMENT OF THE CASE

### A. Background

The United States gained possession of Puerto Rico during the Spanish-American War of 1898, and Spain formally ceded the island under the Treaty of Paris signed in December 1898 and ratified in April 1899. *See* Treaty of Peace between the United States of America and the Kingdom of Spain, 30 Stat. 1754, T.S. No. 343 (1899), JA56-66.

After a brief period of military rule, Congress enacted an organic act (widely known as the Foraker Act) to establish a civil government in Puerto Rico. *See* Organic Act of 1900, Ch. 191, 56th Cong., 1st Sess., 31 Stat. 77 (1900), JA67-89. That Act provided for an Executive Branch headed by a Governor appointed by the President with the advice and consent of the United States Senate, a bicameral legislature in which the lower house was elected by qualified voters of Puerto Rico and the upper house was composed of the heads of the executive departments and five other persons appointed by the President with the advice and consent of the United States Senate, and a Judicial Branch composed of a Supreme Court appointed by the President with the advice and consent of the United States Senate and lower courts appointed by the Governor with the advice and consent of the legislature. *See id.* §§ 17, 27, 33, JA75-76, 79, 83-84. The Act further specified that all laws enacted by the Puerto Rico legislature

must be submitted to Congress, which retained the power to annul them. *See id.* § 31, JA81-82.

The Foraker Act was replaced in 1917 by a new organic act (widely known as the Jones Act), which created an elected Senate and gave the people of Puerto Rico a bill of rights and United States citizenship. *See* Organic Act of 1917, Pub. L. No. 64-368, 39 Stat. 951 (1917), JA90-131. As under the Foraker Act, all laws enacted by the Puerto Rico legislature continued to be submitted to Congress, which retained the power to annul them. *See id.* § 34, JA113-14.

As pro-democratic and anti-colonial movements swept the globe after the Second World War, the United States signed and ratified the United Nations Charter. *See* 59 Stat. 1031, T.S. No. 993 (1945). Under Article 73 of that Charter, the United States assumed a treaty obligation to "develop self-government" in its non-self-governing territories, and to assist the people of such territories "in the progressive development of their free political institutions," and "to transmit regularly to the Secretary-General ... information ... relating to economic, social, and educational conditions" in such territories. United Nations Charter art. 73, JA132-33. Pursuant to that obligation, the United States submitted annual reports on Puerto Rico to the U.N. Secretary General beginning in 1946. *See* United States of Am., *Memorandum Concerning the Cessation of Information Under Article 73(e) of the Charter with regard to the Commonwealth of Puerto Rico*, 28 Dept. of State Bull. 584 (Mar. 20, 1953) (*U.S. Mem. to U.N.*), JA134.

Meanwhile, pressures for greater autonomy led Congress to revisit the governance of Puerto Rico. In 1947, Congress amended the Jones Act to give qualified voters of Puerto Rico the right to elect their own Governor, *see* Pub. L. No. 80-362, 61 Stat. 770 (1947)—a right never previously accorded to any territory of the United States, *see* Calvert Magruder, *The Commonwealth Status of Puerto Rico*, 15 U. Pitt. L. Rev. 1, 7 (1953).

And in 1950, Congress enacted the pathmarking Public Law 600. *See* Pub. L. No. 81-600, 64 Stat. 319, Pet. App. 353-54a. That statute, "[f]ully recognizing the principle of government by consent," offered the people of Puerto Rico "in the nature of a compact" the authority to "organize a government pursuant to a constitution of their own adoption." Pet. App. 353a (codified at 48 U.S.C. § 731b). Upon approval of the statute by the qualified voters of Puerto Rico in a referendum, the legislature was authorized to call a constitutional convention to draft a constitution for Puerto Rico. *See id.* (codified at 48 U.S.C. § 731c).

In a popular referendum held on June 4, 1951, the people of Puerto Rico overwhelmingly accepted the "compact" offered by Congress, and a Constitutional Convention was held from September 1951 to February 1952. Pet. App. 355a. That Convention drafted the Puerto Rico Constitution. *See id.* The proposed Constitution was then submitted to the people of Puerto Rico and again overwhelmingly approved (with over 80% of the vote) in another popular referendum on March 3, 1952. *See id.*

The Puerto Rico Constitution is ordained and established by "[w]e, the people of Puerto Rico ... in

the exercise of our natural rights." P.R. Const. pmbl., Pet. App. 358a. It creates a new political entity, the Commonwealth of Puerto Rico ("*Estado Libre Asociado de Puerto Rico*"), and specifies that the Commonwealth's "political power *emanates from the people* and shall be exercised in accordance with their will, within the terms of the compact agreed upon between the people of Puerto Rico and the United States of America." P.R. Const. art. I, § 1, Pet. App. 359a (emphasis added); *see also id.* pmbl., Pet. App. 358a ("We understand that the democratic system of government is one in which the will of the people is the source of public power."). It divides the Commonwealth's political power between officials in the "legislative, judicial and executive branches" of the new government, none of the members of which are appointed by the President of the United States or any other arm of the Federal Government. P.R. Const. art. I, § 2; art. III, § 1; art. IV, § 1; art. V, §§ 1, 8; art. VI, § 4, Pet. App. 359-62a. Instead, all three branches of the government of the Commonwealth are "subordinate to the sovereignty of the people of Puerto Rico." P.R. Const. art. I, § 2, Pet. App. 359a.

Pursuant to Public Law 600, the Constitution was then submitted to the President of the United States, who—after duly finding, among other things, that it provided for a republican form of government—in turn submitted it to Congress for review. Pet. App. 353-56a; *see generally* 48 U.S.C. §§ 731c, d. Congress confirmed that Public Law 600 "was adopted by the Congress as a compact with the people of Puerto Rico, to become operative upon its approval by the people of Puerto Rico." Pub. L. No. 82-447, 66 Stat. 327, Pet. App. 355a. Congress then considered the proposed Constitution, likewise found (among other

things) that it provided for a republican form of government, and approved it conditioned on minor revisions to provisions addressing compulsory school attendance and the process for constitutional amendments as well as the elimination of section 20 recognizing a number of then-novel human rights. *See id.*, Pet. App. 356-57a. The Senate Report accompanying the legislation explained that the Constitution's approval would mean "the people of Puerto Rico will exercise self-government." S. Rep. No. 82-1720, at 6, 7 (1952). President Truman echoed that view both when transmitting the Puerto Rico Constitution to Congress and when signing the Joint Resolution by which Congress approved the Constitution. Under the new Constitution, in President Truman's view, "full authority and responsibility of local self-government will be vested in the people of Puerto Rico." *Public Papers of the Presidents, Harry S. Truman 1952-53*, at 287, 471 (1966).

Puerto Rico's Constitutional Convention thereafter accepted Congress' conditions "in the name of the people of Puerto Rico," *Resolution No. 34 of the Constitutional Convention: To Accept, in Behalf of the People of Puerto Rico, the Conditions of Approval of the Constitution of the Commonwealth of Puerto Rico Proposed by the Eighty-Second Congress of the United States through Public Law 447 approved July 3, 1952*, July 10, 1952, P.R. Laws Ann. Hist. (Hist. L.P.R.A.) § 9, and the Governor issued a formal proclamation to that effect, *see Proclamation: Establishing the Commonwealth of Puerto Rico*, July 25, 1952, P.R. Laws Ann. Hist. (Hist. L.P.R.A.) § 10. The Puerto Rico Constitution thus took effect on July 25, 1952, *see* 48 U.S.C. § 731d Note—a day still

celebrated yearly in the Commonwealth as Constitution Day. The amendments were overwhelmingly ratified by the people of Puerto Rico in yet another referendum on November 4, 1952. *See generally Proclamation: Amendments to the Constitution of the Commonwealth of Puerto Rico*, Jan. 29, 1953, P.R. Laws Ann. Hist. (Hist. L.P.R.A.) § 11. As a result, numerous provisions of the organic acts that had previously governed Puerto Rico—including provisions giving Congress the authority to review and annul Puerto Rico laws—were repealed, and the remaining provisions were renamed the Federal Relations Act. *See* Pub. L. No. 81-600 §§ 4, 5, 64 Stat. at 319-20, Pet. App. 354a.

Shortly thereafter, the United States informed the United Nations General Assembly that it no longer considered itself bound to provide reports on conditions in Puerto Rico under article 73 of the U.N. Charter. *See U.S. Mem. to U.N.*, JA134-47. As the United States explained, in light of the 1952 Constitution, Puerto Rico had become a fully self-governing jurisdiction. *See id.*; *see generally* Magruder, *Commonwealth Status*, 15 U. Pitt. L. Rev. at 12-13. In response, the U.N. General Assembly recognized that "the people of the Commonwealth of Puerto Rico, by expressing their will in a free and democratic way, have achieved a new constitutional status," and "have effectively exercised their right to self-determination." General Assembly Resolution 748 (VIII), U.N. GAOR, 8th Sess., 459th plen. mtg. at 26 (Nov. 27, 1953), JA149-50; *see also* JA150 ("[I]n the framework of their Constitution and of the compact agreed upon with the United States of America, the people of the Commonwealth of Puerto Rico have been invested with attributes of political

sovereignty which clearly identify the status of self-government attained by the Puerto Rican people as that of an autonomous political entity.").

The Puerto Rico Constitution, as noted above, vests "[t]he legislative power ... in a Legislative Assembly," which consists of two houses, the Senate and the House of Representatives, whose members are elected by the people of Puerto Rico. P.R. Const. art. III, § 1, Pet. App. 360a. All the laws of Puerto Rico—including the criminal laws—are enacted pursuant to that power. Indeed, the Constitution specifies that "[a]ll criminal actions in the courts of the Commonwealth shall be conducted in the name and *by the authority* of 'The People of Puerto Rico.'" P.R. Const. art. VI, § 18, Pet. App. 362a (emphasis added). Thus, like the States, Puerto Rico is subject to two different criminal justice systems—one established by its own laws and enforced by its own prosecutors, and the other established by Congress and enforced by federal prosecutors.

**B. Proceedings Below**

On September 28, 2008, Puerto Rico prosecutors indicted respondent Luis Sánchez Valle for (1) the illegal sale of firearms and ammunition without a license, in violation of P.R. Laws Ann. tit. 25, § 458, and (2) the illegal carrying of a firearm, in violation of P.R. Laws Ann. tit. 25, § 458c. *See* JA11-14; *see also* Pet. App. 2a. Subsequently, while that Commonwealth prosecution was pending, a federal grand jury also indicted Sánchez Valle for the illegal sale of firearms and ammunition without a license. *See* JA15-20; *see also* 18 U.S.C. §§ 922(a)(1)(A), 923(a), 924(a)(1)(D), 924(a)(2). Sánchez Valle pleaded guilty to the federal charges and received a

five-month prison sentence followed by five months' house arrest and three years' supervised release. *See* JA21-30; *see also* Pet. App. 2-3a.

After pleading guilty to the federal charges, Sánchez Valle moved to dismiss the pending prosecution in the Commonwealth court—for which he was subject to a much longer sentence—as a violation of his rights under the Double Jeopardy Clause of the Federal Constitution. The trial court agreed and dismissed the charges. *See* Pet. App. 307-29a.

Similarly, on September 28, 2008, Puerto Rico prosecutors indicted respondent Jaime Gómez Vázquez for (1) the illegal sale of a firearm without a license, *see* P.R. Laws Ann. tit. 25, § 458, (2) the illegal carrying of a rifle, *see id.* § 458f, and (3) the illegal transfer of a mutilated weapon, *see id.* § 458i. *See* JA31-34, Pet. App. 3-4a. As with Sánchez Valle, a federal grand jury subsequently indicted Gómez Vázquez for selling firearms in interstate commerce without a license. JA35-43; *see also* Pet. App. 4a. He pleaded guilty to the federal charges and received an eighteen-month prison sentence followed by three years' supervised release. *See* JA44-55; *see also* Pet. App. 4-5a.

Gómez Vázquez, like Sánchez Valle, then moved to dismiss his pending prosecution in the Commonwealth court—for which, again like Sánchez Valle, he was subject to a much longer sentence—as a violation of his rights under the Double Jeopardy Clause of the Federal Constitution. Once again, the trial court agreed and dismissed the charges. *Id.* at 330-52a.

The Commonwealth appealed both dismissals to the Puerto Rico Court of Appeals, and that court reversed. *Id.* at 243-306a. As the court explained, the double jeopardy issue in the case was controlled by the Puerto Rico Supreme Court's decision in *People v. Castro García*, 20 P.R. Offic. Trans. 775 (1988), which held that the Commonwealth of Puerto Rico and the Federal Government are separate sovereigns for double jeopardy purposes, thus removing any double jeopardy bar to a subsequent prosecution by the other sovereign. Pet. App. 262a, 267-77a, 279-81a. Judge Medina Monteserín concurred on the ground that *Castro García* "prevails at this time in our jurisdiction," but expressed her view that "there is room to review and discuss said caselaw." Pet. App. 284a. Judge González Vargas also filed a separate statement underscoring his view that the authority for Puerto Rico's criminal laws "emanates ... from the People of Puerto Rico through their Constitution, which was democratically adopted as the ultimate expression of their will in the exercise of their self-government attributes," and that "[i]t is legally unacceptable and contrary to the dignity of every Puerto Rican to argue that even the adoption of their criminal laws and the indictment for the violation of same are merely the result of gifts or graces by the People of the United States, as if we found ourselves in the times of the crudest colonial regime." Pet. App. 304a.

The Puerto Rico Supreme Court granted respondents' petitions for certiorari and consolidated the cases. The Court began by analyzing whether each of the various crimes with which respondents were charged under Puerto Rico law was, for federal double jeopardy purposes, the "same offence" to

which they had pleaded guilty under federal law. *See* Pet. App. 7-10a. To that end, the Court applied this Court's "same-elements" test. *See id.* (citing *Blockburger v. United States*, 284 U.S. 299, 304 (1932)). With respect to the crime of selling a firearm or ammunition without a license, the Court held that the Puerto Rico crime is a lesser-included offense of its federal counterpart because the elements of both crimes are identical other than the additional interstate-commerce requirement of the federal crime. *See id.* at 8-10a. Accordingly, the Court held that, under *Blockburger*, the Commonwealth and federal crimes are the "same offence" for federal double jeopardy purposes. *See id.* at 9-10a. The remaining crimes with which respondents were charged under Puerto Rico law did not raise double jeopardy concerns, however, because respondents had not been charged with analogous federal offenses. *See id.* at 10a. None of the Justices expressed any disagreement on these issues.

The Justices divided sharply, however, on the question whether the Commonwealth could nevertheless prosecute respondents for the "same offence" to which they had pleaded guilty in federal court. The majority held that it could not, on the theory that the Commonwealth of Puerto Rico and the Federal Government are a single sovereign for federal double jeopardy purposes. In particular, the majority held, "Puerto Rico's authority to prosecute individuals is derived from its delegation by United States Congress and not by virtue of its own sovereignty." *Id.* at 65a (emphasis omitted); *id.* at 66a ("[T]he Commonwealth of Puerto Rico is not a sovereign entity inasmuch as, being a territory, its ultimate source of power to prosecute offenses is

derived from the United States Congress.") (emphasis omitted). Unless and until Puerto Rico becomes a State, in the majority's view, the dual sovereignty doctrine does not apply. *See id.* at 67-68a. The majority thus overruled its contrary holding in *Castro García* as "clearly erroneous," reversed the Court of Appeals' judgment with respect to the charges against respondents under Commonwealth law for the illegal sale of firearms and ammunition without a license, and ordered the dismissal of those charges. *Id.* at 69a.

Chief Justice Fiol Matta, joined by Justice Oronoz Rodríguez, concurred in the judgment. *See id.* at 71-190a. The Chief Justice sharply disagreed with the majority's application of the dual sovereignty doctrine as a matter of federal constitutional law. *Id.* at 72-73a. In her view, "the drafting and ratification of our Constitution by the People of Puerto Rico was not a marginal and insignificant event, as the Majority insists," but rather an exercise of popular sovereignty. *Id.* at 131a. Thus, even though Puerto Rico is not a State, its "ultimate source of power and authority to create and punish crimes has been the People of Puerto Rico" ever since the Puerto Rico Constitution took effect in 1952. *Id.* at 132a. She thus concluded that the Double Jeopardy Clause of the Federal Constitution did not bar respondents' prosecution by both Puerto Rico and federal authorities. *Id.* at 156-57a. Nonetheless, the Chief Justice would have held that Puerto Rico should not recognize the dual sovereignty doctrine for purposes of its *own* constitutional prohibition on Double Jeopardy, *see* P.R. Const. art. II, § 11, Pet. App. 360a, and thus would have granted respondents relief under the Puerto Rico Constitution, *id.* at 164-90a.

Justice Rodríguez Rodríguez wrote a scathing dissent that also rejected the majority's federal dual sovereignty analysis. *See id.* at 191-242a. She accused the majority of elevating its "ideological" views regarding Puerto Rico statehood over legal analysis. *Id.* at 241a. The majority's legal analysis, according to Justice Rodríguez Rodríguez, is "incompatible with" this Court's dual sovereignty jurisprudence. *Id.* at 195a; *see also id.* at 241-42a. She accordingly called upon "the United States Supreme Court to intervene in this case to bring the majority of this Court back to the fold of the United States Constitution." *Id.* at 196a.

The Commonwealth timely petitioned for a writ of certiorari, which this Court granted on October 1, 2015.

## SUMMARY OF ARGUMENT

The Double Jeopardy Clause of the Federal Constitution protects a defendant from being twice put in jeopardy for "the same offence." U.S. Const. amend. V. As this Court has long recognized, offenses established by two different sovereigns cannot be characterized as the "same" offense within the meaning of that provision, because each sovereign has the right to define and punish its *own* offenses without interference by another sovereign. *See, e.g.*, *Heath v. Alabama*, 474 U.S. 82, 87-90 (1985).

The Puerto Rico Supreme Court held below that the Commonwealth of Puerto Rico and the Federal Government are a single sovereign under the Double Jeopardy Clause, so that the Clause limits the Commonwealth's ability to enforce its own law against a defendant who has been tried, acquitted, or

convicted under federal law. According to that court, Puerto Rico does not qualify as a separate sovereign for federal double jeopardy purposes because it remains subject to congressional authority under the Territorial Clause, U.S. Const. art. IV, § 3, cl. 2.

The court reached the wrong answer because it focused on the wrong question. As this Court has long explained, the dual-sovereignty inquiry does not turn on the *extent* of authority of one entity over another, but instead on the *source* of authority of each entity's laws. *See, e.g.*, *United States v. Wheeler*, 435 U.S. 313, 319-20 (1978). Focusing on Congress' authority over Puerto Rico under the Territorial Clause thus misses the point. What matters here is that the laws of Puerto Rico emanate from authority delegated by the people of Puerto Rico through their own Constitution, not authority delegated by Congress.

There is no way to characterize the Puerto Rico Constitution as an act of Congress. To the contrary, Public Law 600 of 1950 offered the people of Puerto Rico a "compact" under which they could "organize a government pursuant to a constitution of their *own* adoption." Pub. L. No. 81-600, 64 Stat. at 319 (emphasis added). The people of Puerto Rico overwhelmingly accepted that compact, and convened a Constitutional Convention that drafted the Puerto Rico Constitution, which the people of Puerto Rico in turn overwhelmingly approved. That Constitution is ordained and established by "[w]e, the people of Puerto Rico," and creates a new political entity, the Commonwealth of Puerto Rico, that is "subordinate to the sovereignty of the people of Puerto Rico." P.R. Const. pmbl., art. I, § 2, Pet.

App. 358-59a. After ensuring, among other things, that this Constitution provided a republican form of government, Congress approved the Constitution conditioned on certain minor changes. *See* Pub. L. No. 82-447, 66 Stat. at 327-28, Pet. App. 355-57a. And after the Puerto Rico Constitutional Convention formally accepted those conditions "in the name of the people of Puerto Rico," and the Governor issued a proclamation, the Puerto Rico Constitution took effect on July 25, 1952. Since that day, the laws of Puerto Rico (including the criminal laws at issue here) have emanated from sovereign authority delegated by the people of Puerto Rico, not from Congress.

It follows that the Puerto Rico Supreme Court erred by holding that Puerto Rico and the Federal Government are a single sovereign for federal double jeopardy purposes. Accordingly, this Court should reverse the judgment.

## ARGUMENT

### The Commonwealth Of Puerto Rico And The Federal Government Are Separate Sovereigns For Purposes Of The Double Jeopardy Clause Of The United States Constitution.

The Puerto Rico Supreme Court erred by holding that the Commonwealth of Puerto Rico and the Federal Government are a single sovereign for federal double jeopardy purposes, so that a trial, acquittal, or conviction under the laws of one limits a subsequent prosecution under the laws of the other. The Commonwealth and the Federal Government are separate sovereigns for federal double jeopardy purposes because their laws emanate from different sources: the Commonwealth's laws emanate from the

people of Puerto Rico through the Puerto Rico Constitution, which vests legislative power in the Puerto Rico Legislature, while federal laws emanate from the people of the United States through the Federal Constitution, which vests legislative power in Congress. Accordingly, there is no federal double jeopardy bar to successive prosecution under the laws of the United States and the laws of Puerto Rico.

### A. The Federal Double Jeopardy Clause Generally Applies To Puerto Rico.

As a threshold matter, there is no dispute here that the Double Jeopardy Clause applies to Puerto Rico as a general matter. Although the so-called *Insular Cases* of the early twentieth century hold that the Federal Constitution does not necessarily apply of its own force to the Nation's insular possessions in the same manner that it applies to the States and mainland territories, *see, e.g.*, *Balzac v. Porto Rico*, 258 U.S. 298, 305, 312 (1922); *Dorr v. United States*, 195 U.S. 138, 142-49 (1904); *Downes v. Bidwell*, 182 U.S. 244, 293 (1901) (White, J., concurring in the judgment); *cf. Boumediene v. Bush*, 553 U.S. 723, 756-59 (2008) (describing the *Insular Cases*); *United States v. Verdugo-Urquidez*, 494 U.S. 259, 268 (1990) (same), that proposition has no bearing here.

Whatever the merits of the *Insular Cases*, they recognize that "guaranties of certain fundamental personal rights declared in the Constitution, as, for instance, that no person could be deprived of life, liberty, or property without due process of law," apply to the Nation's insular possessions. *Balzac*, 258 U.S. at 312-13; *see also Boumediene*, 553 U.S. at

758-59; *Verdugo-Urquidez*, 494 U.S. at 268-69. Thus, as this Court has recognized, there can be no doubt that "Puerto Rico is subject to ... the Due Process Clause of either the Fifth or the Fourteenth Amendment." *Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328, 331 n.1 (1986) (citing *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 668-69 n.5 (1974)); *see also Rodríguez v. Popular Democratic Party*, 457 U.S. 1, 7-8 (1982); *Torres v. Puerto Rico*, 442 U.S. 465, 468-70 (1979); *Examining Bd. of Eng'rs, Architects & Surveyors v. Flores de Otero*, 426 U.S. 572, 599-601 & n.30 (1976).

In light of this Court's holding that "the double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage," and is thus incorporated into the Due Process Clause of the Fourteenth Amendment, *Benton v. Maryland*, 395 U.S. 784, 793-96 (1969), there appears to be no basis to dispute that the Double Jeopardy Clause applies in Puerto Rico. *Cf. Torres*, 442 U.S. at 475-76 (Brennan, J., joined by Stewart, Marshall, and Blackmun, JJ., concurring in the judgment) ("Whatever the validity of the [*Insular Cases*] in the particular historical context in which they were decided, those cases are clearly not authority for questioning the application of the Fourth Amendment—or any other provision of the Bill of Rights—to the Commonwealth of Puerto Rico in the 1970's.").[1]

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[1] In the early years of the last century, this Court applied federal double jeopardy principles to criminal prosecutions in the Philippine Islands, which were then a United States territory. *See Grafton v. United States*, 206 U.S. 333, 354-55

Certainly, Congress has never suggested that federal double jeopardy protections do not apply to Puerto Rico as a general matter; to the contrary, the Jones Act, which established the framework for the governance of Puerto Rico before the establishment of the Commonwealth in 1952, expressly provided federal protection against double jeopardy. *See* Pub. L. No. 64-368 § 2 cl. 3, 39 Stat. at 951, JA90; *cf. Torres*, 442 U.S. at 470 (noting that "a legislative determination that a constitutional provision practically and beneficially may be implemented in a territory is entitled to great weight"). Indeed, the Commonwealth has never disputed in this litigation that, as a general matter, the federal Double Jeopardy Clause applies to Puerto Rico.

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(1907); *Kepner v. United States*, 195 U.S. 100, 121-34 (1904). In each of those cases, however, the Court based its decision on an act of Congress providing for the temporary administration of a civilian government in the Philippine Islands, which provided that "'no person, for the same offense, shall be twice put in jeopardy of punishment.'" *Grafton*, 206 U.S. at 345 (quoting Act of July 1, 1902, Ch. 1369, 57th Cong., 1st Sess., 32 Stat. 691, 692 (1902)); *see also Kepner*, 195 U.S. at 124. In light of that statute, those cases expressly declined to address whether the Double Jeopardy Clause applied of its own force in the Philippine Islands. *See Grafton*, 206 U.S. at 345; *Kepner*, 195 U.S. at 124. Similarly, in *Puerto Rico v. Shell Co. (P.R.)*, 302 U.S. 253, 264 (1937), this Court suggested in dictum that federal double jeopardy principles apply in Puerto Rico, but again did not address the question whether the Double Jeopardy Clause applies of its own force in Puerto Rico. Rather, the *Shell* Court noted that "Section 2 (the Bill of Rights) of the Puerto Rico Organic Act of 1917 ... provides that 'no person for the same offense shall be twice put in jeopardy of punishment.'" 302 U.S. at 264 n.2 (quoting Pub. L. No. 64-368 § 2, 39 Stat. at 951).

### B. The Federal Double Jeopardy Clause Does Not Prevent Successive Prosecution By Separate Sovereigns.

What the Commonwealth *has* disputed, and vigorously, in this litigation is whether the federal Double Jeopardy Clause limits Puerto Rico's ability to prosecute a defendant who has been tried, acquitted, or convicted by the Federal Government (and vice versa). Under this Court's precedents dating back well into the nineteenth century, it has been settled that the Double Jeopardy Clause bars successive prosecution by the *same* sovereign, but does not apply to successive prosecution by *different* sovereigns. *See, e.g.*, *United States v. Lara*, 541 U.S. 193, 197, 199 (2004); *Heath*, 474 U.S. at 87-88; *Wheeler*, 435 U.S. at 320; *Abbate v. United States*, 359 U.S. 187, 193-94 (1959); *Bartkus v. Illinois*, 359 U.S. 121, 128-39 (1959); *Hebert v. Louisiana*, 272 U.S. 312, 314 (1926); *United States v. Lanza*, 260 U.S. 377, 382 (1922); *Cross v. North Carolina*, 132 U.S. 131, 139 (1889); *Ex parte Siebold*, 100 U.S. 371, 389-91 (1879); *Moore v. Illinois*, 55 U.S. (14 How.) 13, 19-20 (1852); *Fox v. Ohio*, 46 U.S. (5 How.) 410, 435 (1847).

The reason for that venerable rule is simple: because a crime is an offense against a particular sovereign, "[w]hen a defendant in a single act violates the 'peace and dignity' of two sovereigns by breaking the laws of each, he has committed two distinct 'offences.'" *Heath*, 474 U.S. at 88 (quoting *Lanza*, 260 U.S. at 382); *see also id.* ("[W]hen the same act transgresses the laws of two sovereigns, 'it cannot be truly averred that the offender has been twice punished for the same offence; but only that by

one act he has committed two offences, for each of which he is justly punishable.'") (quoting *Moore*, 55 U.S. (14 How.) at 19); *see also Westfall v. United States*, 274 U.S. 256, 258 (1927) (noting that the proposition that different sovereigns may punish the same conduct "is too plain to need more than statement").

Because there is no question that the States and the Federal Government are separate sovereigns, a prior state prosecution poses no federal double jeopardy bar to a subsequent federal prosecution, *see, e.g.*, *Abbate*, 359 U.S. at 189-95; *Lanza*, 260 U.S. at 382, just as a prior federal prosecution poses no federal double jeopardy bar to a subsequent state prosecution, *see, e.g.*, *Bartkus*, 359 U.S. at 128-38. Similarly, because the various States are different sovereigns, a prior prosecution by one State poses no federal double jeopardy bar to a subsequent prosecution by another State. *See, e.g.*, *Heath*, 474 U.S. at 89-93. To the limited extent the issue arose in the nineteenth century, when the scope of federal criminal law was sharply circumscribed, territories were treated as States for dual-sovereignty purposes. *See, e.g.*, *Oregon v. Coleman*, 1 Or. 191, 192 (Or. Terr. 1855) (applying dual sovereignty doctrine to reject argument that Oregon Territory could not punish sale of liquor to Indians without giving rise to double jeopardy concerns); *In re Murphy*, 40 P. 398, 399-402 (Wyo. 1895) (applying dual sovereignty doctrine to reject argument that Territory (and later State) of Wyoming could not punish bigamy without giving rise to double jeopardy concerns); *State v. Norman*, 52 P. 986, 988-89 (Utah 1898) (same); *see generally Moore*, 55 U.S. (14 How.) at 20 ("Every citizen of the United States is also a citizen of a State

*or territory*. He may be said to owe allegiance to two sovereigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. ... That either or both may (if they see fit) punish such an offender, cannot be doubted.") (emphasis added).

The *same* sovereign, however, may not prosecute an individual twice for the same offense. *See, e.g.*, *Benton*, 395 U.S. at 793-98. And that is true even where that sovereign delegates its power to a different entity that enacts its own laws. Thus, a State may not prosecute an individual who has already been prosecuted for the same offense by a municipality of that State; even though the State may treat the municipality as a sovereign entity under its own law, the municipality's power to punish emanates from state law. *See, e.g.*, *Waller v. Florida*, 397 U.S. 387, 391-95 (1970). Similarly, this Court held in the early twentieth century that the government of a territory (at that time, the Philippine Islands) that "owes its existence wholly to the United States," and whose courts "exert all their powers under and by authority of the same government,—that of the United States" may not prosecute an individual who has already been prosecuted for the same offense by a federal military tribunal. *Grafton*, 206 U.S. at 354-55; *cf. Shell*, 302 U.S. at 264 (federal laws and territorial laws of Puerto Rico before adoption of 1952 Constitution "are creations emanating from the same sovereignty" that would trigger federal double jeopardy protection) (dictum).

The dual sovereignty doctrine, at bottom, reflects and respects our federal system. The genius of the

Founders was to "split the atom of sovereignty," and thereby to establish "two orders of government, each with its own direct relationship, its own privity, its own set of mutual rights and obligations to the people who sustain it and are governed by it." *Alden v. Maine*, 527 U.S. 706, 751 (1999) (internal quotations and brackets omitted). Because the people of the United States are subject to two governments: one state (or territorial), and the other national, "it may sometimes happen that a person is amenable to both jurisdictions for one and the same act." *United States v. Cruikshank*, 92 U.S. 542, 550 (1875). Sovereignty, in short, is not a zero-sum game, and a state or territorial government may be sovereign within its own sphere without trenching on the sovereignty of the Federal Government in a different sphere, even within the same territory. *See id.*; *see also Lara*, 541 U.S. at 212 (Kennedy, J., concurring in the judgment) ("Each sovereign must respect the proper sphere of the other, for the citizen has rights and duties as to both.").

The dual sovereignty doctrine is thus "the natural consequence of a citizenship which owes allegiance to two sovereignties, and claims protection from both." *Cruikshank*, 92 U.S. at 550-51; *see also id.* at 551 ("[The citizen] owes allegiance to the two departments, so to speak, and within their respective spheres must pay the penalties which each exacts for disobedience to its laws. In return, he can demand protection from each within its own jurisdiction."). Because the policy of a state or territorial government, on the one hand, and the Federal Government, on the other, "may be, and sometimes is, at variance on a given subject," the doctrine prevents the one from "indirectly hinder[ing] or

defeat[ing] the policy" of the other. *United States v. Barnhart*, 22 F. 285, 292 (D. Or. 1884).[2] The doctrine thus promotes the effective operation of our federal system.

### C. Whether Two Entities Are Separate Sovereigns For Purposes Of The Federal Double Jeopardy Clause Depends On The Source Of Authority Of Their Laws.

The determination whether an entity is a separate sovereign for federal double jeopardy purposes does not call for a metaphysical exercise in political philosophy. Rather, it calls only for an inquiry into "the ultimate *source* of the power under which the respective prosecutions were undertaken." *Wheeler*, 435 U.S. at 320 (emphasis added); *see also Lara*, 541 U.S. at 199; *Heath*, 474 U.S. at 89-90. To the extent

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[2] As the *Barnhart* court noted well over a century ago:

> For instance, the United States, under the fifteenth amendment, may punish any one who discriminates against the exercise of the elective franchise by another on account of color. But if the state may also declare such an act a crime, it may purposefully affix a mere nominal punishment thereto, and thus give any one guilty of such an act an opportunity to seek refuge in its tribunals before the United States can reach him, and by a trial and acquittal therein, at the hands of a sympathizing jury, or the imposition of a mere nominal punishment, effectually prevent the United States from prosecuting the offender in its own courts, and inflicting such punishment upon him as may be necessary to vindicate its authority and maintain its policy in the premises.

22 F at 292.

the laws of two entities emanate from different sources of authority, successive prosecution by each entity poses no federal double jeopardy concern, regardless of the extent of control, if any, by one entity over the other.

That is the lesson of this Court's decision in *Wheeler*, which applied the dual-sovereignty doctrine to an Indian tribe. The *Wheeler* Court freely acknowledged that "Congress has *plenary authority* to legislate for the Indian tribes in all matters, including their form of government." 435 U.S. at 319 (emphasis added). But a focus on the "extent of control exercised by one prosecuting authority over the other" misses the point. *Id.* at 320. Thus, although an Indian tribe is concededly "subject to ultimate federal control," *id.* at 322, it is a separate sovereign for federal double jeopardy purposes because its authority to punish emanates from its retained sovereignty, not any power delegated by Congress, *see id.* at 322-32.

This Court subsequently applied that analysis in the context of successive criminal prosecutions by two different States. *See Heath*, 474 U.S. at 87-94. In that case, the Court reaffirmed *Wheeler*'s teaching that the dual sovereignty determination "turns on whether the two entities draw their authority to punish the offender from distinct sources of power." *Id.* at 88. Thus, "[i]n those instances where the Court has found the dual sovereignty doctrine inapplicable, it has done so because the two prosecuting entities did not derive their powers to prosecute from independent sources of authority." *Id.* at 90.

Focusing on the *source* of authority for each jurisdiction's laws, as opposed to the *extent* of authority, if any, of one jurisdiction over the other, ensures that the dual sovereignty doctrine serves its proper constitutional purpose. Insofar as the laws of two jurisdictions emanate from different sources, it cannot be said that an individual subject to successive prosecution by each jurisdiction is thereby put in jeopardy for the "same" offense. *See, e.g.*, *Heath*, 474 U.S. at 88; *Lanza*, 260 U.S. at 382; *Moore*, 55 U.S. (14 How.) at 19-21.

### D. Puerto Rico Law Emanates From A Different Source Than Federal Law.

In light of the foregoing, this case boils down to the straightforward proposition that the Double Jeopardy Clause does not limit Puerto Rico's authority to prosecute a defendant previously tried, acquitted, or convicted by the Federal Government, because "its criminal laws, like those of a state, emanate from a different source than the federal laws." *United States v. López Andino*, 831 F.2d 1164, 1168 (1st Cir. 1987). That proposition may not have been true prior to the adoption of the Puerto Rico Constitution in 1952, insofar as the Puerto Rico legislature at that time exercised authority delegated by Congress through organic acts. *See, e.g.*, *Shell*, 302 U.S. at 264 (dictum); *cf. Grafton*, 206 U.S. at 353-55. But it is manifestly true after the adoption of the Puerto Rico Constitution in 1952, which represented the "constituent act of a people who ... freely determined to organize themselves into a body politic and to prescribe for themselves a basic framework of self-government," Magruder, *Commonwealth Status*, 15 U. Pitt. L. Rev. at 14, and

thus "work[ed] a significant change in the relation between Puerto Rico and the rest of the United States," *Córdova & Simonpietri Ins. Agency, Inc. v. Chase Manhattan Bank, N.A.*, 649 F.2d 36, 39 (1st Cir. 1981) (Breyer, J.); *see also U.S. Mem. to U.N.*, JA134-47.

Indeed, Congress itself could hardly have made this point any clearer. Public Law 600 of 1950, "fully recognizing the principle of government by consent," offered the people of Puerto Rico a "compact" under which they could engage in an exercise of popular sovereignty by "organiz[ing] a government pursuant to a constitution of their *own* adoption." Pub. L. No. 81-600, 64 Stat. at 319, Pet. App. 353a (codified at 48 U.S.C. § 731b; emphasis added). The only conditions were that the constitution "shall provide a republican form of government and provide a bill of rights." Pet. App. 353a (codified at 48 U.S.C. § 731c); *see also Torres*, 442 U.S. at 470 (noting that these were the "only express substantive requirements" imposed by Congress). The people of Puerto Rico accepted the compact offered by Congress, assembled a Constitutional Convention, and enacted and approved their own Constitution.

That Constitution leaves no doubt about the source of its authority. In terms redolent of both the Federal Constitution and the Declaration of Independence, the Constitution proclaims that is ordained and established by "[w]e, the people of Puerto Rico," who "create" a new political entity, the Commonwealth of Puerto Rico, "in the exercise of our natural rights." P.R. Const. pmbl., Pet. App. 358a. It confirms that "the will of the people is the source of public power." *Id.* It specifies that the

Commonwealth's "political power *emanates from the people* and shall be exercised in accordance with their will, within the terms of the compact agreed upon by the people of Puerto Rico and the United States of America." *Id.*, art. I, § 1, Pet. App. 359a (emphasis added). It creates the "legislative, judicial and executive branches" of the Commonwealth government, and provides that all three branches "shall be equally subordinate to the *sovereignty of the people of Puerto Rico.*" *Id.*, art. I, § 2, Pet. App. 359a (emphasis added). It vests "[t]he executive power" of the Commonwealth "in a Governor," *id.* art. IV, § 1, Pet. App. 360a, "[t]he legislative power" of the Commonwealth "in a Legislative Assembly," *id.*, art. III, § 1, Pet. App. 360a, and "[t]he judicial power" of the Commonwealth in "a Supreme Court, and in such other courts as may be established by law," *id.*, art. V, § 1, Pet. App. 361a. And it provides that "[a]ll criminal actions in the courts of the Commonwealth shall be conducted in the name and *by the authority of* the 'People of Puerto Rico.'" *Id.*, art. VI, § 18, Pet. App. 362a (emphasis added).

Neither Congress nor the President plays any role whatsoever in the enactment or enforcement of the laws of Puerto Rico. *See U.S. Mem. to U.N.*, JA141-44. Those laws are not submitted to Congress for review, and there is no legal mechanism for Congress to block them or otherwise interfere with the Commonwealth's internal governance (and Congress has never attempted to do so). Nor does the President have any power to select or remove any of the persons who enforce the laws of Puerto Rico, thereby underscoring that such persons cannot possibly be deemed to be exercising delegated federal power. *See, e.g.*, *Lara*, 541 U.S. at 216 (Thomas, J.,

concurring in the judgment); *U.S. Mem. to U.N.*, JA141-42. The power to enforce the criminal laws, after all, is the quintessential executive power, so Puerto Rico prosecutors could not exercise delegated federal power while being wholly beyond any form of "meaningful Presidential control." *Printz v. United States*, 521 U.S. 898, 922 (1997); *see also Free Enter. Fund v. Public Co. Accounting Oversight Bd.*, 561 U.S. 477, 492-98 (2010); *Metropolitan Wash. Airports Auth. v. Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 265-71 (1991); *Morrison v. Olson*, 487 U.S. 654, 692-93, 695-96 (1988).[3]

Pursuant to Public Law 600, the Puerto Rico Constitution was duly submitted to the President, who in turn submitted it to Congress for its approval. App. 355-56a. Congress considered the proposed Constitution, and approved it conditioned on minor revisions to provisions addressing compulsory school attendance and the process for constitutional amendments as well as the elimination of section 20 recognizing a number of then-novel human rights. *See* Pub. L. No. 82-447, 66 Stat. 327, Pet. App. 356-57a. By approving the Constitution, Congress necessarily recognized that—as the Constitution makes clear on its face—the people of Puerto Rico had exercised their *own* sovereignty to establish their *own* government to enact their *own* laws.

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[3] *Grafton* and *Kepner*, in contrast, involved prosecutions brought by the civilian government in the Philippine Islands led by a Governor appointed (and removable) by the President. *See* Act of July 1, 1902, Ch. 1369, 57th Cong., 1st Sess., § 1, 32 Stat. 691, 692 (1902); *see also Grafton*, 206 U.S. at 342-45; *Kepner*, 195 U.S. at 110.

Indeed, Public Law 600 specifies that the Puerto Rico Constitution "shall provide a republican form of government." Pet. App. 353a (codified at 48 U.S.C. § 731c). As this Court has long explained, "the distinguishing feature of that form is the right of the people to choose their *own* officers for governmental administration, and pass their *own* laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of *the people themselves*." *Duncan v. McCall*, 139 U.S. 449, 461 (1891) (emphasis added); *see also id.* (in a republican form of government, "the people are ... the source of political power"). Before forwarding the Puerto Rico Constitution to Congress, the President was required to ensure that it complied with that provision, *see* Pet. App. 353a (codified at 48 U.S.C. § 731d), and duly did so, *see Public Papers of the Presidents, Harry S. Truman 1952-53*, at 287, 471; Pet. App. 355a. Congress too independently satisfied itself that the Puerto Rico Constitution provided a republican form of government. *See* Pet. App. 356a. Congress hardly would have insisted that Puerto Rico adopt a "republican form of government," and the President and Congress hardly would have confirmed that Puerto Rico had in fact done so, if that government exercised authority delegated by Congress, as opposed to the people of Puerto Rico.

The fact that Congress authorized the exercise of popular sovereignty that led to the adoption of the Puerto Rico Constitution in the first place does not render it any less an exercise of popular sovereignty. After all, most of the thirty-seven States that entered the Union after the original thirteen States started out as United States territories. In no fewer than twenty-one of those territories, Congress similarly

authorized the exercise of popular sovereignty that led to the adoption of a state constitution and eventual admission to the Union. *See infra* Appendix A. But such authorization did not transform these state constitutions into federal law—even where Congress imposed certain conditions on the prospective constitutions (such as a ban on polygamy or a guarantee of non-sectarian public education). *See* Pub. L. No. 61-219, 36 Stat. 557, 558-59, 569-70 (1910) (New Mexico and Arizona); Pub. L. No. 59-233, 34 Stat. 267, 269-71 (1906) (Oklahoma); Ch. 138, 53rd Cong., 2d Sess., 28 Stat. 107, 108 (1894) (Utah); *see generally* Eric Biber, *The Price of Admission: Causes, Effects & Patterns of Conditions Imposed on States Entering the Union*, 46 Am. J. Legal Hist. 119, 200-08 (2004).

As this Court has explained, moreover, Congress can recognize and confirm an exercise of sovereignty by another entity without thereby delegating federal power. *See Lara*, 541 U.S. at 203-04. In that case, Congress recognized and confirmed the sovereignty of an Indian tribe to apply its criminal laws to an Indian who was not a member of the tribe, *see* 25 U.S.C. § 1301(2), even though this Court had previously held that the tribe had no such sovereignty, *see Duro v. Reina*, 495 U.S. 676, 689-92 (1990). The Court held that this was a valid exercise of congressional power that rendered the tribe a separate sovereign for federal double jeopardy purposes. *See Lara*, 541 U.S. at 199-207. The Court justified that holding in part by noting that Congress had also "made adjustments to the autonomous status of other such dependent entities—sometimes making far more radical adjustments than those at issue here." *Id.* at 203. In support of that point, the

Court cited, among other examples, Public Law 600 and the Puerto Rico Constitution. *See id.* at 204. Needless to say, that citation would be inexplicable if Public Law 600 and the Puerto Rico Constitution reflected nothing more than a delegation of federal power.

Nor does the fact that Congress reviewed the proposed Puerto Rico Constitution, and conditioned its approval thereof on certain changes, in any way negate the exercise of popular sovereignty that led to the adoption of that Constitution in the first place. Virtually every State after the original thirteen submitted its proposed constitution to either Congress or the President for approval as a condition for admission to the Union. *See infra* Appendix B. The fact that Congress or the President reviewed and approved these state constitutions, of course, did not transform them into federal law.

And that is true even where, as in several instances, Congress conditioned its approval of those constitutions on certain changes. *See generally* Biber, *The Price of Admission*, 46 Am. J. Legal Hist. at 200-08. Thus, for example, Congress conditioned its approval of the Nebraska Constitution on the elimination of a provision that "deni[ed] the elective franchise" on the basis of "race or color," Nebraska Admissions Act, Ch. 36, 39th Cong., 2d Sess., 14 Stat. 391, 392 (1867), and conditioned its approval of the Missouri Constitution on the disavowal of a potentially problematic reading of a certain constitutional provision, *see* Resolution Providing for the Admission of the State of Missouri into the Union on a Certain Condition, Ch. 53, 16th Cong., 2d Sess., 3 Stat. 645, 645 (1821). Similarly, as a condition for

approving the proposed constitutions of New Mexico and Arizona, Congress required the adoption of lengthy constitutional amendments *drafted by Congress itself* concerning recall elections and constitutional amendments. *See* Pub. L. No. 62-8, 37 Stat. 39, 40-41, 42-43 (1911). Again, it would be fanciful to suggest that such conditional approval transformed these state constitutions into federal law.

Indeed, when conditionally approving the Puerto Rico Constitution, Congress did not simply impose the changes it desired. Instead, it specified that the proposed Constitution must be "amended by *the people of Puerto Rico*." Pet. App. 356-57a (emphasis added). Congress further provided that "the Constitution of the Commonwealth of Puerto Rico hereby approved shall become effective when the Constitutional Convention of Puerto Rico shall have declared in a formal resolution its acceptance *in the name of the people of Puerto Rico* of the conditions of approval herein contained," and when the Governor of Puerto Rico shall issue a proclamation to that effect. Pub. L. No. 82-447, 66 Stat. at 327-28, Pet. App. 357a (emphasis added). Without this final sovereign act of acceptance by the people of Puerto Rico, in other words, the Puerto Rico Constitution never would have taken effect.

Post-1952 decisions of this Court involving Puerto Rico only confirm that the Commonwealth's laws emanate from sovereign authority delegated by the people of Puerto Rico, not from Congress. In 1974, this Court held that the Commonwealth's laws are "State statute[s]" within the meaning of the Three-Judge Court Act, 28 U.S.C. § 2281. *See Calero-*

*Toledo*, 416 U.S. at 670-73. The Court based that holding on the "significant changes in Puerto Rico's governmental structure" resulting from the establishment of the Commonwealth by the 1952 Constitution. *Id.* at 672. As the Court explained, the Commonwealth was "'organized as a body politic *by the people of Puerto Rico* under their *own* constitution.'" *Id.* (emphasis added; quoting *Mora v. Mejías*, 206 F.2d 377, 387 (1st Cir. 1953)). Precisely because the Commonwealth's laws reflect the sovereign will of the people of Puerto Rico, they are due the solicitude given to "[S]tate statutes" under the Three-Judge Court Act "to avoid unnecessary interference with the laws of a sovereign state." *Id.* at 670, 675 (internal quotation omitted). The laws of the Commonwealth of Puerto Rico, the Court held, thus differ from the laws of a territory "'subject to congressional regulation.'" *Id.* at 673 (quoting and distinguishing *Stainback v. Mo Hock Ke Lo Po*, 336 U.S. 368 (1949), which held that the Three-Judge Court Act did not apply to laws enacted by the Territory of Hawaii). The Court thereby abrogated *Benedicto v. West India & Panama Tel. Co.*, 256 F. 417, 419 (1st Cir. 1919), which predated the establishment of the Commonwealth.

The Court built upon *Calero-Toledo* two years later in *Flores de Otero*. The issue there was whether a federal statute giving federal district courts jurisdiction over actions "to redress the deprivation, under color of any *State* law ... of any right, privilege or immunity" secured by federal law, applied to actions challenging laws of the Commonwealth of Puerto Rico. 426 U.S. at 574-75 & n.1 (emphasis added). In answering that question in the affirmative, the Court emphasized that Public

Law 600 had authorized the people of Puerto Rico "to draft their *own* constitution," and that, in light of that Constitution, "Puerto Rico now elects its Governor and legislature; appoints its judges, all cabinet officials, and lesser officials in the executive branch; ... and amends its *own* civil and criminal code." 426 U.S. at 593, 594 (emphasis added; internal quotation omitted); *see also id.* at 597 ("[A]fter 1952, ... Congress relinquished its control over the organization of the local affairs of the island and granted Puerto Rico a measure of autonomy comparable to that possessed by the States.").

And in 1982, this Court upheld "[t]he methods by which the people of Puerto Rico and their representatives have chosen to structure the Commonwealth's electoral system" against a federal constitutional challenge. *Rodríguez*, 457 U.S. at 8. In so ruling, this Court held that those methods are entitled to "substantial deference" precisely because "Puerto Rico, like a state, is an autonomous political entity, '*sovereign* over matters not ruled by the [federal] Constitution.'" *Id.* (emphasis added; quoting *Calero-Toledo*, 416 U.S. at 673, and citing *Córdova*, 649 F.2d at 39-42).

In the final analysis, as the First Circuit observed more than half a century ago, to characterize the Constitution and laws of the Commonwealth of Puerto Rico as delegated federal law is "to impute to the Congress the perpetration of ... a monumental hoax." *Figueroa*, 232 F.2d at 620. Since 1952, the Federal Government has told the people of Puerto Rico and the world that the people of Puerto Rico democratically adopted and approved their *own* Constitution. *See, e.g., U.S. Mem. to U.N.*, JA134-47.

That Constitution, which Congress reviewed and approved, establishes a government of the people, by the people, and for the people of Puerto Rico. In this regard, the Constitution of Puerto Rico is no different than the constitutions of the fifty States; the latter simply led to Statehood, whereas the former led instead to the affiliated status of a Commonwealth (*Estado Libre Asociado*, or literally "Free Associated State"). While Puerto Rico thus "occupies a relationship to the United States that has no parallel in our history," *Flores de Otero*, 426 U.S. at 596,[4] the

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[4] Prior to the adoption of the Puerto Rico Constitution in 1952, no other territory of the United States had ever adopted its own constitution without proceeding to apply for statehood. In 1976, the Northern Mariana Islands and the United States entered into a Covenant to establish a Commonwealth, *see* Pub. L. No. 94-241, 90 Stat. 263 (1976), codified at 48 U.S.C. § 1801 *et seq.*, and the people of the Northern Mariana Islands thereafter adopted their own Constitution that was subsequently approved by the President, *see* Proclamation No. 4534, 42 Fed. Reg. 56593 (Oct. 24, 1977). No court has squarely addressed the double jeopardy implications of that arrangement; the District Court of the Northern Mariana Islands has opined in *dicta* that the Commonwealth of the Northern Mariana Islands and the Federal Government are separate sovereigns for federal double jeopardy purposes. *See United States ex rel. Richards v. De Leon Guerrero*, No. 92-1, 1992 WL 321010, at *35 (D. N. Mar. I. July 24, 1992), *aff'd on other grounds*, 4 F.3d 749 (9th Cir. 1993). The District of Columbia, Guam, the Virgin Islands, and American Samoa are all self-governed pursuant to organic acts of Congress, although American Samoa has adopted a constitution under the auspices of the Department of the Interior. *See* Pub. L. No. 93-198, 87 Stat. 774 (1973), codified at D.C. Code § 1-201.01 *et seq.* (District of Columbia); Pub. L. No. 81-630, 64 Stat. 384 (1950), codified at 48 U.S.C. § 1421 *et seq.* (Guam); Pub. L. No. 83-517, 68 Stat. 497 (1954), codified at 48 U.S.C. § 1391 *et seq.* (Virgin Islands); Pub. L. No.

fact that its Constitution led to association by compact instead of statehood does not negate the exercise of popular sovereignty that established that Constitution in the first place. In light of that Constitution, the laws of Puerto Rico emanate from the people of Puerto Rico, just as the laws of the fifty States emanate from the people of those States, and Puerto Rico, like a State, qualifies as a separate sovereign for federal double jeopardy purposes.

### E. The Extent Of Congress' Authority Over Puerto Rico Under The Territorial Clause Is Irrelevant To The Federal Double Jeopardy Inquiry.

The Puerto Rico Supreme Court based its contrary conclusion on the proposition that, "with the adoption of a constitution, Puerto Rico did not cease to be a territory of the United States subject to the powers of Congress, as provided in the territorial clause of the federal Constitution (Art. IV, § 3)." Pet. App. 65a; *see also United States v. Sánchez*, 992 F.2d 1143, 1150-53 (11th Cir. 1993). But that is a legal and logical *non sequitur*. The extent of Congress' authority over Puerto Rico under the Territorial

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70-89, 45 Stat. 1253 (1929), codified at 48 U.S.C. § 1661 *et seq.*; Exec. Order No. 10,264, 16 Fed. Reg. 6417 (June 29, 1951) (American Samoa). The lower courts have held that these entities and the Federal Government are a single sovereign for federal double jeopardy purposes, *see, e.g., United States v. Weathers*, 186 F.3d 948, 951 n.3 (D.C. Cir. 1990) (citing cases); *United States v. Carriaga*, 117 F.3d 1426 (9th Cir. 1997) (*per curiam*); *Government of the Virgin Islands v. Dowling*, 633 F.2d 660, 669 (3d Cir. 1980), and indeed a federal statute provides as much with respect to Guam, the Virgin Islands, and American Samoa, *see* 48 U.S.C. § 1704.

Clause has no bearing on the dispositive issue here—"the *source* of th[e] power to punish" violations of Puerto Rico law. *Wheeler*, 435 U.S. at 322 (emphasis added); *see also Lara*, 541 U.S. at 199; *Heath*, 474 U.S. at 88-89.

The Puerto Rico Supreme Court below, like the Eleventh Circuit in *Sánchez*, appears to have fallen into a semantic trap. Because the relevant doctrine is called the dual *sovereignty* doctrine, those courts concluded that Puerto Rico could not invoke that doctrine unless it could claim to be a "sovereign" for all purposes, and that it could not make such a claim insofar as it remained subject to federal authority under the Territorial Clause. *See* Pet. App. 66a ("The Commonwealth of Puerto Rico is not a sovereign entity inasmuch as, being a territory, its ultimate source of power to prosecute offenses is derived from the United States Congress.") (emphasis omitted); *Sánchez*, 992 F.2d at 1151 ("Puerto Rico is still constitutionally a territory, and not a separate sovereign.").

That approach cannot be squared with this Court's dual sovereignty jurisprudence. As noted above, it is an "undisputed fact that Congress has *plenary* authority to legislate for the Indian tribes in all matters, including their form of government." *Wheeler*, 435 U.S. at 319 (emphasis added). Nonetheless, those tribes are deemed separate sovereigns for federal double jeopardy purposes because their laws do not emanate from authority delegated by Congress. *Id.* at 329-30; *see also Lara*, 541 U.S. at 203. What matters is "not the extent of control exercised by one prosecuting authority over the other but rather the ultimate source of the power

under which the respective prosecutions were undertaken." 435 U.S. at 320; *see also Heath*, 474 U.S. at 88 (dual sovereignty determination "turns on whether the two entities draw their authority to punish the offender from distinct sources of power").

It follows that the Territorial Clause has no bearing here, and this Court's summary decision in *Harris v. Rosario*, 446 U.S. 651, 651-52 (1980) (*per curiam*), which holds that Congress may treat Puerto Rico differently than a State under the Territorial Clause, is inapposite. That case involved the scope of Congress' power under the *Federal* Constitution to apply federal law selectively to Puerto Rico, not the source of Puerto Rico's power under the *Commonwealth* Constitution to enact its own laws. This case, of course, has nothing to do with the extent of Congress' authority to apply *federal* law to Puerto Rico, but instead Puerto Rico's authority to enforce its *own* criminal laws enacted under its *own* Constitution.

The Puerto Rico Supreme Court also missed the point by focusing on what it characterized as Congress' unfettered "constitutional authority to amend or revoke the powers exercised by the Government of Puerto Rico." Pet. App. 61a; *see also Sánchez*, 992 F.2d at 1150 ("Every exercise of authority in a territory which does not proceed under a direct Congressional enactment proceeds, at least, at the sufferance of the Congress, which may override disfavored rules or institutions at will.").

As an initial matter, there is no reason to suppose that Congress "may unilaterally repeal the Puerto Rican Constitution," *id.* at 1152, or revoke the "compact" offered by Public Law 600 and accepted by

the people of Puerto Rico. *See Flores de Otero*, 426 U.S. at 597 (noting that Congress in 1952 "*relinquished* its control over the organization of the local affairs of the island") (emphasis added); *United States v. Quiñones*, 758 F.2d 40, 42 (1st Cir. 1985) ("[I]n 1952, Puerto Rico ceased being a territory of the United States subject to the plenary powers of Congress as provided in the Federal Constitution. The authority exercised by the federal government emanated thereafter from the compact itself.");[5] *see generally* Magruder, *Commonwealth Status*, 15 U. Pitt. L. Rev. at 13-15 (concluding that the question whether Congress can unilaterally revoke

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[5] The general rule that one Congress cannot bind a later one, after all, is not absolute. *See, e.g., Fletcher v. Peck*, 10 U.S. (6 Cranch) 87, 135 (1810) (Marshall, C.J.) ("The past cannot be recalled by the most absolute power."); *Perry v. United States*, 294 U.S. 330, 353 (1935) ("[T]he right to make binding obligations is a competence attaching to sovereignty."). Congress' power over the territories necessarily includes the power to relinquish such power, either in whole or in part. Thus, just as one Congress could commit the United States to granting independence to the Philippine Islands, *see* Pub. L. No. 73-127, 48 Stat. 456 (1934), one Congress could commit the United States to a "compact" with the people of Puerto Rico that a subsequent Congress could not unilaterally abrogate, Pub. L. No. 81-600, 64 Stat. 319, Pet. App. 353a; *cf. Downes*, 182 U.S. at 269-71 (once Congress incorporates a territory into the United States, Congress cannot subsequently limit the operation of the Constitution there); *id.* at 261 ("There are steps which can never be taken backward."); *Springville v. Thomas*, 166 U.S. 707, 708-09 (1897) (same). Indeed, the statutory reference to a "compact with the people of Puerto Rico," Pub. L. No. 82-447, 66 Stat. 327, Pet. App. 355a, would be inexplicable if Congress retained unilateral authority to revoke the Puerto Rico Constitution.

the compact with Puerto Rico is ultimately academic because, as a "practical" matter, Congress cannot unilaterally revoke the Puerto Rico Constitution and "pass a new Organic Act for the internal government of Puerto Rico").

But putting aside the fact that Congress in 1952 "relinquished its control over the organization of the local affairs of the island," *Flores de Otero*, 426 U.S. at 597, the existence of any such control would not alter the double jeopardy analysis. The sovereignty of the Indian tribes, after all, "exists only at the sufferance of Congress and is subject to complete defeasance," *Wheeler*, 435 U.S. at 322, but that does not negate their status as separate sovereigns for federal double jeopardy purposes when enforcing their own laws. "*[U]ntil Congress acts*, the tribes retain their existing sovereign powers." *Id.* (emphasis added). Here too, there can be no question that Congress has not in fact interfered with or supplanted the criminal laws of the Commonwealth of Puerto Rico. It follows that successive prosecution under those laws and federal laws poses no federal double jeopardy concerns.

Nor is it possible to distinguish the Indian cases cited above, as both the Puerto Rico Supreme Court and the Eleventh Circuit sought to do, on the ground that the tribes have an "inherent" or "original" sovereignty that predates the formation of the United States. *See* Pet. App. 65a; *Sánchez*, 992 F.2d at 1152-53 & n.11. The point of those cases is that tribal laws emanate from the tribes' own sovereign authority, not authority delegated by Congress. *See, e.g.*, *Lara*, 541 U.S. at 199-207; *Wheeler*, 435 U.S. at

322-32. Similarly here, Puerto Rico law emanates from the people of Puerto Rico, not from Congress.

In this regard, once again, Puerto Rico is in the same position as most of the States that entered the Union after the ratification of the Federal Constitution. None of those States (with the possible exception of Texas and Hawaii) could claim an "inherent" or "original" sovereignty predating its association with the United States. *See Lara*, 541 U.S. at 210-11 (Stevens, J., concurring) ("[M]ost of the States were never actually independent sovereigns, and those that were enjoyed that independent status for only a few years."). Rather, most of those States started out as territories established by the Federal Government that eventually developed, engaged in an exercise of popular sovereignty by enacting their own constitutions, and sought admission to the Union. *See infra* Appendix C (citing territorial acts establishing territories that eventually petitioned for Statehood). The sovereignty of each of those States, like the sovereignty of Puerto Rico (and indeed the United States itself) thus emanates from its own people, and forms the basis for its own government and laws.[6]

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[6] The Eleventh Circuit in *Sánchez* engaged in some revisionist history to avoid this straightforward point. The court acknowledged, as it must, that "[a]fter the creation of the Union from the original thirteen states, new states have been admitted to the Union from what had theretofore been territories of the United States." 992 F.2d at 1149 n.4. The court could not explain, however, how those territories obtained their sovereignty. Thus, the court simply created its own history, asserting that "[a]lthough the process may never have

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At bottom, this is a straightforward case. The Double Jeopardy Clause of the United States Constitution poses no barrier to successive prosecution under Puerto Rico and federal law, because those laws emanate from different sources of authority. To conclude, as did the Puerto Rico Supreme Court, that the Commonwealth's laws emanate from authority delegated by Congress is to disparage the dignity of the people of Puerto Rico who established the Commonwealth and its Constitution in 1952.

To be sure, there is a lively debate in Puerto Rico with respect to the island's political status. But even those who advocate a change in that status cannot deny that "[w]e, the people of Puerto Rico," created the Commonwealth and its laws. P.R. Const. pmbl., Pet. App. 358a. Puerto Rico is thus a separate sovereign for federal double jeopardy purposes. That conclusion does not negate federal sovereignty in Puerto Rico. Just as there is no inconsistency in recognizing federal sovereignty in California while also recognizing California sovereignty, there is no inconsistency in recognizing federal sovereignty in Puerto Rico while also recognizing Puerto Rico

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been formally acknowledged, Congress must have, at some instant, relinquished its authority over territorial lands so that the people of those lands could approach the United States as an independent entity seeking admission to the Union." *Id.* That assertion is baseless. No magic fairy descended upon those territories before their admission to the Union to tap them with a wand of sovereignty. Rather, the citizens of these territories simply engaged in an exercise of popular sovereignty by enacting their own constitutions.

sovereignty. Both flags can, and do, fly together side by side on the island.

## CONCLUSION

For the foregoing reasons, this Court should reverse the judgment.

Respectfully submitted,

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# APPENDICES

## APPENDIX A

### Congressional Acts Authorizing Territorial Governments To Propose State Constitutions

**Alabama:**

Ch. 47, 15th Cong., 2d Sess., 3 Stat. 489 (1819) ("[T]he inhabitants of the territory of Alabama be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper.")

**Arizona:**

Pub. L. No. 61-219, 36 Stat. 557 (1910) ("[T]he qualified electors of the Territory of Arizona are hereby authorized to vote for and choose delegates to form a constitutional convention for said Territory for the purpose of framing a constitution for the proposed State of Arizona.")

**Colorado:**

Ch. 139, 43rd Cong., 2d Sess., 18 Stat. 474 (1875) ("[T]he members of the convention thus elected shall meet at the capital of said Territory ... and, after organization, shall declare, on behalf of the people of said Territory, that they adopt the Constitution of the United States, whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said Territory.")

**Illinois:**

Ch. 67, 15th Cong., 1st Sess., 3 Stat. 428 (1818) ("[T]he inhabitants of the territory of Illinois be, and they are hereby, authorized to form for themselves a constitution and state government,

and to assume such name as they shall deem proper.")

**Indiana:**

Ch. 57, 14th Cong., 1st Sess., 3 Stat. 289 (1816) ("[T]he inhabitants of the territory of Indiana be, and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper.")

**Louisiana:**

Ch. 21, 11th Cong., 3d Sess., 2 Stat. 641 (1811) ("[T]he inhabitants of all that part of the territory or country ceded under the name of Louisiana, ... contained within the following limits ... be and they are hereby authorized to form for themselves a constitution and state government, and to assume such name as they may deem proper, under the provisions and upon the conditions herein after mentioned.")

**Minnesota:**

Ch. 60, 34th Cong., 3d Sess., 11 Stat. 166 (1857) ("[T]he inhabitants of that portion of the Territory of Minnesota which is embraced within the following limits ... be and they are hereby authorized to form for themselves a Constitution and State Government, by the name of the State of Minnesota.")

**Mississippi:**

Ch. 23, 14th Cong., 2d Sess., 3 Stat. 348 (1817) ("That the inhabitants of the western part of the Mississippi territory ... be, and they hereby are, authorized to form for themselves a constitution

and state government, and to assume such name as they shall deem proper.")

**Missouri:**

Ch. 22, 16th Cong., 1st Sess., 3 Stat. 545 (1820) ("[T]he inhabitants of that portion of the Missouri territory included within the boundaries hereinafter designated, be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper.")

**Montana:**

Ch. 180, 50th Cong., 2d Sess., 25 Stat. 676 (1889) ("[T]he delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said Territories ... and, after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed States, respectively.")

**Nebraska:**

Ch. 59, 38th Cong., 1st Sess., 13 Stat. 47 (1864) ("[The inhabitants of that portion of the territory of Nebraska included in the boundaries hereinafter designated be, and they are hereby, authorized to form for themselves a constitution and state government.")

**Nevada:**

Ch. 36, 38th Cong., 1st Sess., 13 Stat. 30 (1864) ("[T]he members of the convention, thus elected,

shall meet at the capital of said territory ... and, after organization, shall declare, on behalf of the people of said territory, that they adopt the constitution of the United States. Whereupon the said convention shall be, and it is hereby, authorized to form a constitution and state government for said territory.")

**New Mexico:**

Pub. L. No. 61-219, 36 Stat. 557 (1910) ("[T]he qualified electors of the Territory of New Mexico are hereby authorized to vote for and choose delegates to form a constitutional convention for said Territory for the purpose of framing a constitution for the proposed State of New Mexico.")

**North Dakota:**

Ch. 180, 50th Cong., 2d Sess., 25 Stat. 676 (1889) ("[T]he delegates to the conventions elected as provided for this act shall meet at the seat of government of each of said Territories ... and, after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed States, respectively.")

**Ohio:**

Ch. 40, 7th Cong., 1st Sess., 2 Stat. 173 (1802) ("[T]he inhabitants of the eastern division of the territory northwest of the river Ohio, be, and they are thereby authorized to form for themselves a constitution and state government.")

**Oklahoma:**

Pub. L. No. 59-234, 34 Stat. 267 (1906) ("[T]he inhabitants of all that part of the United States now constituting the Territory of Oklahoma and the Indian Territory, as at present described, may adopt a constitution and become the State of Oklahoma, as hereinafter provided.")

**South Dakota:**

Ch. 180, 50th Cong., 2d Sess., 25 Stat. 676 (1889) ("[T]he delegates to the conventions elected as provided for this act shall meet at the seat of government of each of said Territories ... and, after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed States, respectively.")

**Texas:**

Res. 8, 28th Cong., 2d Sess., 5 Stat. 797 (1845) ("Congress doth consent that the territory properly included within, and rightfully belonging to the Republic of Texas, may be erected into a new State, to be called the State of Texas, with a republican form of government, to be adopted by the people of said republic, by deputies in convention assembled.")

**Utah:**

Ch. 138, 53rd Cong., 2d Sess., 28 Stat. 107 (1894) ("That the delegates to the convention thus elected shall meet at the seat of government of said Territory ... and, after organization, shall declare

on behalf of the people of said proposed State that they adopt the Constitution of the United States, whereupon the said convention shall be, and is hereby, authorized to form a constitution and State government for said proposed State.")

**Washington:**

Ch. 180, 50th Cong., 2d Sess., 25 Stat. 676 (1889) ("That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said Territories on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed States, respectively.")

**Wisconsin:**

Ch. 89, 29th Cong., 1st Sess., 9 Stat. 56 (1846) ("[T]he people of the Territory of Wisconsin be, and they are hereby, authorized to form a constitution and State government.")

## APPENDIX B

## Congressional Acts And Presidential Proclamations Approving Proposed State Constitutions

**Alabama:**

Res. 1, 16th Cong., 1st Sess., 3 Stat. 608 (1820) ("Whereas ... the people of the said territory did, on the second day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government so formed, is republican, and in conformity to the principles of the articles of compact between the original states ... [T]he state of Alabama shall be one, and is hereby declared to be one, of the United States of America.")

**Alaska:**

Pub. L. 85-508, 72 Stat. 339 (1958) (Subject to the provisions of this Act, and upon issuance of the proclamation required by section 8 (c) of this Act, ... the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Alaska ... is hereby found to be republican in form and in conformity with the Constitution of the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.")

48 U.S.C. § 21 note ("WHEREAS I find and announce that the people of Alaska have duly adopted the propositions required to be submitted to them ... I, Dwight D. Eisenhower, ... declare and proclaim that the procedural requirements imposed by the Congress on the State of Alaska to

entitle that State to admission into the Union on an equal footing with the other States of the Union is now accomplished.")

**Arizona:**

Pub. Res. 62-8, 37 Stat. 39 (1911) ("The Territories of New Mexico and Arizona are hereby admitted into the Union upon an equal footing with the original State[] ... upon the terms and conditions hereinafter set forth. The admission herein provided for shall take effect upon the proclamation of the President of the United States, when the conditions explicitly set forth in this joint resolution shall have been complied with.")

62 Proclamation, 37 Stat. 1728 (1912) ("Whereas the Congress of the United States did pass a joint resolution, ... which resolution required that, as a condition precedent to the admission of said State, the electors of Arizona should, at the time of the holding of the State election as recited in said resolution, vote upon and ratify and adopt an amendment was proposed and set forth at length in said resolution of Congress ... I, WILLIAM HOWARD TAFT, ... declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of Arizona to entitle that State to admission have been ratified and accepted, and that the admission of the State is now complete.")

**Arkansas:**

Ch. 100, 24th Cong., 1st Sess., 5 Stat. 50 (1836) ("[T]he people of the Territory of Arkansas, did, ... form for themselves a constitution and State

Government, which constitution and State Government, so formed in republican.")

**California:**

Ch. 50, 31st Cong., 1st Sess., 9 Stat. 452 (1850) ("[T]he people of California have presented a constitution and asked admission into the Union ... which, on due examination, is found to be republican in its form of government.")

**Colorado:**

1876 Pres. Proc. No. 6, 19 Stat. 665 (1876) ("I, ULYSSES S. GRANT, ... declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of Colorado to entitle that State to admission to the Union have been ratified and accepted ...")

**Florida:**

Ch. 48, 28th Cong., 2d Sess., 5 Stat. 742 (1845) ("Whereas, the people of the Territory of Iowa did ... form for themselves a constitution and State government; and whereas, the people of Territory of Florida did, in like manner, ... form for themselves a constitution and State government, both of which said constitutions are republican ...")

**Hawaii:**

Pub. L. 86-3, 73 Stat. 4 (1959) ("[S]ubject to the provisions of this Act, and upon issuance of the proclamation required by section 7(c) of this Act, ... the constitution formed pursuant to the provisions of the Act of the Territorial Legislature of Hawaii ... is hereby found to be republican in form and in conformity with the Constitution of

the United States and the principles of the Declaration of Independence, and is hereby accepted, ratified, and confirmed.")

Pres. Proc. No. 3309, 73 Stat. c74 (1959)
(I, DWIGHT D. EISENHOWER, ... hereby declare and proclaim that the procedural requirements imposed by the Congress on the State of Hawaii to entitle that State to admission into the Union have been complied with in all respects ...")

**Idaho:**

Ch. 656, 51st Cong., 1st Sess., 26 Stat. 215 (1890) ("The people of the Territory of Idaho did[] ... form for themselves a constitution, ... which constitution is republican in form and is in conformity with the Constitution of the United States.")

**Illinois:**

Res. 1, 15th Cong., 2d Sess., 3 Stat. 536 (1818) ("[I]n pursuance of an act of Congress, ... the people of said territory did, on the twenty-sixth day of August, in the present year, by a convention called for that purpose, form for themselves a constitution and state government, which constitution and state government, so formed, is republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory north-west of the river Ohio ...")

**Indiana:**

Res. 1, 14th Cong., 2d Sess., 3 Stat. 399 (1816) ("[I]n pursuance of an act of Congress, ... the people of the said territory did, on the twenty-ninth day of June, in the present year, by a

convention called for that purpose, form for themselves a constitution and state government, so formed, is republican, and in conformity with the principles of the articles of compact between the original states and the people and states in the territory north-west of the river Ohio ...)

**Iowa:**

Ch. 48, 28th Cong., 2d Sess., 5 Stat. 742 (1845) ("Whereas, the people of the Territory of Iowa did ... form for themselves a constitution and State government; and whereas, the people of Territory of Florida did, in like manner, ... form for themselves a constitution and State government, both of which said constitutions are republican ...")

Ch. 1, 29th Cong., 2d Sess., 9 Stat. 117 (1846) ("[T]he people of the Territory of Iowa did[] ... form for themselves a constitution and State government—which constitution is republican in its character and features—and said convention has asked admission of the said Territory into the Union as a State ...")

**Kansas:**

Ch. 26, 35th Cong., 1st Sess., 11 Stat. 269 (1858) ("Whereas, the people of the Territory of Kansas did[] ... form for themselves a constitution and State government, which constitution is republican; ... [and] said convention did adopt an ordinance ... and *whereas* said ordinance is not acceptable to Congress, and it is desirable to ascertain whether the people of Kansas concur in the changes in said ordinance, hereinafter stated,

and desire admission into the Union as a State as herein proposed.")

Ch. 20, 36th Cong., 2d Sess., 12 stat. 126 (1861) ("[T]he people of the Territory of Kansas[]... did form for themselves a constitution and State government, republican in form, which was ratified and adopted by the people ...")

**Louisiana:**

Ch. 50, 12th Cong., 1st Sess., 2 Stat. 701 (1812) ("[T]he representatives of the people of all that part of the territory or country ceded, under the name of "Louisiana," by the treaty made at Paris, ... between the United States and France, contained within the following limits ... [did] form for themselves a constitution and state government, and give to the said state the name of the state of Louisiana in pursuance of an act of Congress ... And the said constitution having been transmitted to Congress and by them being hereby approved.")

**Michigan:**

Ch. 99, 24th Cong., 1st Sess., 5 Stat. 49 (1836) ("[T]he constitution and State Government which the people of Michigan have formed for themselves be, the same is hereby, accepted, ratified, and confirmed ... *Provided always*, and this admission is upon the express condition, that the said State shall consist of and have jurisdiction over all the territory included within the following boundaries, and over none other.")

Ch. 6, 24th Cong., 2d Sess., 5 Stat. 144 (1837) ("Whereas, in pursuance of the act of Congress ... a convention of delegates, elected by the people of

the said State of Michigan, for the sole purpose of giving their assent to the ... the said act, did, assent to the provisions of said act ... [T]he state of Michigan shall be one, and is hereby declared to be one of the United States ...")

**Minnesota:**

Ch. 31, 35th Cong., 1st Sess., 11 Stat. 285 (1858) ("[T]he people of said Territory did[] ... form for themselves a constitution and state government, which is republican in form, and was ratified and adopted by the people ...")

**Mississippi:**

Res. 1, 15th Cong., 1st Sess., 3 Stat. 472 (1817) ("[I]n pursuance of an act of Congress, ... the people of the said territory did[] ... form for themselves a constitution and state government, which constitution and state government so formed, in republican, and in conformity to the principles of the articles of compact between the original states and the people and states in the territory north-west of the river Ohio ...")

**Missouri:**

Res. 1, 16th Cong., 2d Sess., 3 Stat. 645 (1821) ("Missouri shall be admitted into this union on an equal footing with the original states, in all respects whatever, upon the fundamental condition, that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said state to Congress, shall never be construed to authorize the, and that no law shall be passed in conformity thereto, by which any citizen, of either of the states in this Union, shall be excluded from the enjoyment of

any of the privileges and immunities to which such citizen is entitled under the constitution of the United States.")

16 Proclamation, 3 Stat. 797 (1821) ("I, James Monroe, ... have issued this my proclamation, announcing the fact, that the said State of Missouri has assented to the fundamental condition required by the resolution of Congress aforesaid.")

**Montana:**

1889 Pres. Proc. No. 7, 26 Stat. 1551 (1889) ("[I]t was provided by said act that the Constitution so adopted should be republican in form and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence; and that the Convention should by an ordinance irrevocable ... make certain provisions prescribed in said act ... I, Benjamin Harrison, ... declare and proclaim the fact that the conditions imposed by Congress on the State of Montana to entitle that State to admission to the Union have been ratified and accepted ...")

**Nebraska:**

Ch. 36, 39th Cong., 2d Sess., 14 Stat. 391 (1867) ("[T]he constitution and State government which the people of Nebraska have formed for themselves be, and the same is hereby, accepted, ratified, and confirmed ... [T]his act shall not take effect except upon the fundamental condition that within the State of Nebraska there shall be no denial of the elective franchise, or of any other right, to any

person, by reason of race or color, excepting Indians not taxed.")

1867 Pres. Proc. No. 9, 14 Stat. 820 (1867) ("I, ANDREW JOHNSON, ... declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of Nebraska to entitle that Sate to admission to the Union have been ratified and accepted, and that the admission of the said State into the Union is now complete.")

**Nevada:**

1864 Pres. Proc. No. 22, 13 Stat. 749 (1864) ("[W]hereas the said constitution and state government have been formed, pursuant to the conditions prescribed by the fifth section of the act of congress ... I, ABRAHAM LINCOLN, ... declare and proclaim that the said State of Nevada is admitted into the Union on an equal footing with the original states.")

**New Mexico:**

Pub. Res. 62-8, 37 Stat. 39 (1911) ("The Territories of New Mexico and Arizona are hereby admitted into the Union upon an equal footing with the original States[] ... upon the terms and conditions hereinafter set forth. The admission herein provided for shall take effect upon the proclamation of the President of the United States, when the conditions explicitly set forth in this joint resolution shall have been complied with ...")

1912 Pres. Proc. No. 62, 37 Stat. 1723 (1912) ("WHEREAS the Congress of the United Stated did pass a joint resolution, ... which resolution required that the electors of New Mexico should vote upon an amendment of their State

Constitution, which was proposed and set forth at length in said resolution of Congress ... I WILLIAM HOWARD TAFT, ... declare and proclaim the fact that the fundamental conditions imposed by Congress on the State of New Mexico to entitle that State to admission have been ratified and accepted ...")

**North Dakota:**

1889 Pres. Proc. No. 5, 26 Stat. 1548 (1889) ("Whereas it was provided by said act that the Constitution so adopted should be republican in form and make no distinction in civil or political rights on account of race or color, except as Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence and that the Convention should, by an ordinance irrevocable ... make certain provisions prescribed in said act ... I, Benjamin Harrison, ... declare and proclaim the fact that the conditions imposed by Congress on the State of North Dakota to entitle that State to admission to the Union have been ratified and accepted ...)

**Oklahoma:**

1907 Pres. Proc. No. 60, 35 Stat. 2160 (1907) ("WHEREAS it appears that the said constitution and government that the said constitution makes no distinction in civil or political rights on account of the race or color; and is not repugnant to the Constitution of the United States or to the principles of the Declaration of Independence, and that it contains all of the six provisions expressly required by Section 3 of the said act to be therein contained ... I, THEODORE ROOSEVELT, ...

declare and announce that the State of Oklahoma is to be deemed admitted by Congress into the Union under and by virtue of the said act on an equal footing with the original States.")

**Oregon:**

Ch. 33, 35th Cong., 2d Sess., 11 Stat. 383 (1859) ("[T]he people of Oregon have framed, ratified, and adopted a constitution of State government which is republican in form, and in conformity with the Constitution of the United States ...")

**South Dakota:**

1889 Pres. Proc. No. 6, 26 Stat. 1549 (1889) ("[W]hereas it was provided by said act that the Constitution so adopted should be republican in form and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence; and that the Convention should, by an ordinance irrevocable ... make certain provisions prescribed in said act ... I, Benjamin Harrison, ... declare and proclaim the fact that the conditions impose by Congress on the State of North Dakota to entitle that State to admission to the Union have been ratified and accepted ...")

**Texas:**

Res. 1, 29th Cong., 1st Sess., 9 Stat. 108 (1845) ("WHEREAS the Congress of the United States, by a joint resolution approved March the first, eighteen hundred and forty-five, did consent that the territory properly included within, and rightfully belonging to, the Republic of Texas,

might be erected into a new State, ... and whereas the people of the said Republic of Texas, by deputies in convention assembled, with the consent of the existing government, did adopt a constitution, and erect a new State with a republican form of government and, in the name of the people of Texas, and by their authority, id ordain and declare that they assented to and accepted the proposals, conditions, and guaranties contained in said first and second sections of said resolution ...")

**Utah:**

1896 Pres. Proc. No. 9, 29 Stat. 876 (1896) ("[W]hereas the Constitution and Government of said proposed State are republican in form, said Constitution is not repugnant to the Constitution of the United States and the Declaration of Independence; and all the provisions of said Act have been complied with in the formation of said Constitution and government ... I, Grover Cleveland, ... declare and proclaim that the terms and conditions prescribed by the Congress of the United States to entitle the State of Utah to admission into the Union have been duly complied with ...")

**Washington:**

1889 Pres. Proc. No. 8, 26 Stat. 1552 (1889) ("[W]hereas it was provided by said act that the Constitution so adopted should be republican in form and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the Convention should by an ordinance irrevocable ...

make certain provisions prescribed in said act ... I, Benjamin Harrison, ... declare and proclaim that fact that the conditions imposed by Congress on the State of Washington to entitle that State to admission to the Union have been ratified and accepted ...")

**West Virginia:**

Ch. 6, 37th Cong., 3d Sess., 12 Stat. 633 (1862) ("[T]he people inhabiting that portion of Virginia known as West Virginia did ... frame for themselves a Constitution with a view of becoming a separate and independent State; and whereas both the Convention and the Legislature aforesaid have requested that the new State should be admitted into the Union, and the Constitution aforesaid being republican in form, Congress doth hereby consent that the said forty-eight counties may be formed into a separate and independent State. ... *Provided, always*, That this act shall not take effect until after the proclamation of the President of the United States hereinafter provided for.")

1863 Pres. Proc. No. 3, 13 Stat. 731 (1863) ("Whereas ... the State of West Virginia was declared to be one of the United States of America ... upon the condition that certain changes should be duly made in the proposed constitution for that state ... I, ABRAHAM LINCOLN, ... in pursuance of the act of congress aforesaid, declare and proclaim that the said act shall take effect and be in force from and after sixty days from the date hereof.")

**Wisconsin:**

Ch. 50, 30th Cong., 1st Sess., 9 Stat. 233 (1848) ("[T]he people of the Territory of Wisconsin did, ... by a convention of delegates, called and assembled for that purpose, form for themselves a constitution and State government, which said constitution is republican ...")

**Wyoming:**

Ch. 664, 51st Cong., 1st Sess., 26 Stat. 222 (1890) ("The people of the Territory of Wyoming did, ... form for themselves as constitution, which constitution was ratified and adopted by the people of said Territory[,] ... which constitution is republican in form and is in conformity with the constitution of the United States.")

## APPENDIX C

### Congressional Acts Establishing Territories

**Alabama:**

Ch. 59, 14th Cong., 2d Sess., 3 Stat. 371 (1817) ("[A]ll that part of the Mississippi territory which lies within the following boundaries ... .shall for the purpose of a temporary government, constitute a separate territory, and be called 'Alabama.'")

**Alaska:**

Pub. L. 62-334, 37 Stat. 512 (1912) ("[T]he territory ceded to the United States by Russia ... and known as Alaska, shall be and constitute the Territory of Alaska under the laws of the United States, the government of which shall be organized and administered as provided by said laws.")

**Arizona:**

Ch. 56, 37th Cong., 3d Sess., 12 Stat. 664 (1863) ("[A]ll that part of the present Territory of New Mexico situate west of a line running due south from ... be, and the same is hereby, erected into a temporary government by the name of the Territory of Arizona.")

**Arkansas:**

Ch. 49, 15th Cong., 2d Sess., 3 Stat. 493 (1819) ("[A]ll that part of the territory of Missouri which lies ... shall, for the purpose of a territorial government, constitute a separate territory, and be called the Arkansaw territory.")

**Colorado:**

Ch. 59, 36th Cong., 2d Sess., 12 Stat. 172 (1861) ("[A]ll that part of the territory of the United States included within the following limits ... be and the same is hereby erected into a temporary government by the name of the Territory of Colorado.")

**Florida:**

Ch. 13, 17th Cong., 1st Sess., 3 Stat. 654 (1822) ("[A]ll the territory ceded by Spain to the United States, known by the name of East and West Florida, shall constitute a territory of the United States, under the name of the territory of Florida, the government whereof shall be organized and administered as follows...")

**Idaho:**

Ch. 117, 37th Cong., 3d Sess., 12 Stat. 808 (1863) ("[A]ll that part of the territory of the United States included within the following limits ... be and the same is hereby erected into a temporary government by the name of the Territory of Colorado.")

**Illinois:**

Ch. 13, 10th Cong., 2d Sess., 2 Stat. 514 (1809) ("[A]ll that part of the Indiana territory which lies [within specified boundaries] shall, for the purposes of temporary government, constitute a separate territory, and be called Illinois.")

**Indiana:**

Ch. 41, 6th Cong., 1st Sess., 2 Stat. 58 (1800) ("[A]ll that part of the territory of the United States northwest of the Ohio river, which lies

[within specified boundaries], shall for the purposes of temporary government, constitute a separate territory, and be called the Indiana Territory.")

**Iowa**:

Ch. 96, 25th Cong., 2d Sess., 5 Stat. 235 (1838) ("[A]ll that part of the present Territory of Wisconsin which lies [within specified boundaries] shall, for the purposes of temporary government, be and constitute a separate Territorial Government by the name of Iowa.")

**Kansas**:

Ch. 59, 33d Cong., 1st Sess., 10 Stat. 277, 284 (1854) ("[A]ll that part of the territory of the United States included within the following limits ... be, and the same is hereby, created into a temporary government by the name of the Territory of Kansas.")

**Louisiana**:

Ch. 38, 8th Cong., 1st Sess., 2 Stat. 283 (1804) ("[A]ll that portion of country ceded by France to the United States, under the name of Louisiana, which lies [within specified boundaries], shall constitute a territory of the United States, under the name of the territory of Orleans, the government whereof shall be organized and administered as follows...")

**Michigan**:

Ch. 5, 8th cong., 2d Sess., 2 Stat. 309 (1805) ("[A]ll that part of the Indiana territory, which lies [within specified boundaries], shall, for the

purposes of temporary government, constitute a separate territory, and be called Michigan.")

**Minnesota:**

Ch. 121, 30th Cong., 2d Sess., 9 Stat. 403 (1849) ("[A]ll that part of the territory of the United States which lies within the following limits ... be, and the same is hereby, erected into a temporary government by the name of the Territory of Minnesota.")

**Mississippi:**

Ch. 28, 5th Cong., 2d Sess., 1 Stat. 549 (1798) ("[A]ll that tract of country [within specified boundaries] shall be, and hereby is constituted one district, to be called the Mississippi Territory; and the President of the United States is hereby authorized to establish therein a government in all respects similar to that now exercised in the territory northwest of the River Ohio ...")

**Missouri:**

Ch. 95, 12th Cong., 1st Sess., 2 Stat. 743 (1812) ("[T]he territory heretofore called Louisiana shall hereafter be called Missouri, and [ ] the temporary government of the Territory of Missouri shall be organized and administered in the manner herein after prescribed.")

**Montana:**

Ch. 95, 38th Cong., 1st Sess., 13 Stat. 85 (1864) ("[A]ll that part of the territory of the United States included within the limits ... be, and the same is hereby, created into a temporary government by the name of the Territory of Montana.")

**Nebraska:**

Ch. 59, 33d Cong., 1st Sess., 10 Stat. 277 (1854) ("[A]ll that part of the territory of the United States included within the following limits ... be, and the same is hereby, created into a temporary government by the name of the Territory of Nebraska.")

**Nevada:**

Ch. 83, 36th Cong., 2d Sess., 12 Stat. 209 (1861) ("[A]ll that part of the territory of the United States, included within the following limits, ... be, and the same is hereby, erected into a temporary government by the name of the Territory of Nevada.")

**New Mexico:**

Ch. 49, 31st Cong., 1st Sess., 9 Stat. 446 (1850) ("[A]ll that portion of the Territory of the United States bounded as follows ... be, and the same is hereby, erected into a temporary government, by the name of the Territory of New Mexico.")

**North Dakota:**

Ch. 86, 36th Cong., 2d Sess., 12 Stat. 239 (1861) ("[A]ll that part of the territory of the United States included within the following limits ... be, and the same is hereby, organized into a temporary government, by the name of the Territory of Dakota.")

Ch. 180, 50th Cong., 2d Sess., 25 Stat. 676 (1889) ("The area comprising the Territory of Dakota shall, before the purposes of this act, be divided of the seventh standard parallel ... and the delegates elected as hereinafter provided the constitutional

convention in districts north of said parallel shall assemble in convention ... at the city of Bismarck; and the delegated elected in the districts south of said parallel shall ... assemble in convention at the city of Sioux Falls.")

**Ohio:**

Northwest Ordinance of 1787, re-enacted by Ch. 8, 1st Cong., 1st Sess., 1 Stat. 51 (1789) ("An Ordinance for the government of the Territory of the United States northwest of the River Ohio. Be it ordained ... that the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.")

**Oklahoma:**

Ch. 182, 51st Cong., 1st Sess., 26 Stat. 81 (1890) ("[A]ll that portion of the United States now knowns as the Indian Territory ... is hereby erected into a temporary government by the name of the Territory of Oklahoma.")

**Oregon:**

Ch. 177, 30th Cong., 1st Sess., 9 Stat. 323 (1848) ("[A]ll that part of the Territory of the United States which lies [within specified boundaries], known as the Territory of Oregon, shall be organized into and constitute a temporary government by the name of the Territory of Oregon.")

**South Dakota:**

Ch. 86, 36th Cong., 2d Sess., 12 Stat. 239 (1861) ("[A]ll that part of the territory of the United

States included within the following limits ... be, and the same is hereby, organized into a temporary government, by the name of the Territory of Dakota.")

Ch. 180, 50th Cong., 2d Sess., 25 Stat. 676 (1889) ("The area comprising the Territory of Dakota shall, before the purposes of this act, be divided of the seventh standard parallel ... and the delegates elected as hereinafter provided the constitutional convention in districts north of said parallel shall assemble in convention ... at the city of Bismarck; and the delegated elected in the districts south of said parallel shall ... assemble in convention at the city of Sioux Falls.")

**Tennessee:**

Ch. 14, 1st Cong., 2d Sess., 1 Stat. 123 (1790) ("[T]he territory of the United States south of the river Ohio, for the purposes of temporary government, shall be one district.")

**Utah:**

Ch. 51, 31st Cong., 1st Sess., 9 Stat. 453 (1850) ("[A]ll that part of the territory of the United States included within the following limits ... be, and the same is hereby, created into a temporary government, by the name of the Territory of Utah.")

**Washington:**

Ch. 90, 32d Cong., 2d Sess., 10 Stat. 172 (1853) ("[F]rom and after the passage of this act, all that portion of the Oregon Territory lying and being [within specified boundaries] be organized and constitute a temporary government by the name of the Territory of Washington.")

**Wisconsin:**

Ch. 54, 24th Cong., 1st Sess., 5 Stat. 10 (1824) ("[T]he country included within the following boundaries shall constitute a separate Territory, for the purposes of temporary government, by the name of Wisconsin.")

**Wyoming:**

Ch. 235, 40th Cong., 2d Sess., 15 Stat. 178 (1868) ("[A]ll that part of the United States described as follows ... be, and the same is hereby, organized into a temporary government by the name of the Territory of Wyoming.")